

DRAFT 7/5/05
CONSENSUS SUMMARY

Historical/Cultural and Burial Sites Technical Group Meeting
Initiative to Develop a Proposal for a Spring Rise of the Missouri River
June 29, 2005

***Use and Meaning of the Meeting Notes:** Plenary and Technical Working Group meeting notes are intended to be a general summary of key issues raised and discussed by participants at meetings. The presentation of issues or items discussed is not designed to be totally comprehensive, or reflect the breadth or depth of discussions. However, it is intended to record the gist of conversations and conclusions.*

Where a consensus or other agreement was reached, it will be so noted. Where ideas are comments are from only one or several participants, or where a brainstormed list is presented the content of which was not agreed to by all group members, the recorders will to the best of their abilities note these qualifiers. When participants raise comments about the meeting notes, or make other suggestions or comments following meetings which are more than "corrections," we will add these in a section at the end of the meeting notes captioned "Post Script".

Question: Are we developing recommendations that will only be implemented in 2006, will be implemented in 2006 and four succeeding years to allow for a biological assessment, or a long-term plan that will be implemented through adaptive management? If it is a long-term plan, when will NEPA be triggered?

Water Levels in Reservoirs:

1. A stop point (drought) protocol for the spring rise needs to be addressed both system wide and by individual reservoir. There is no universal draw down that is applicable to every reservoir. Recommendation: A stop point elevation (pool level) should be identified for each reservoir. This stop point should give priority to municipal water use (the elevations of water intakes).
2. Because of current low water levels in the main stem dams, there may not be enough water in 2006 to implement the spring rise program without endangering municipal water intakes. If releases are curtailed, will they be of sufficient magnitude to benefit either the pallid sturgeon or the research conducted on the breeding of this fish. Recommendation: The Corps should conduct a risk assessment for 2006 that factors in the effects of the proposed spring rise on water intakes.

This Meeting Summary is the independent work product of the mediation team from CDR Associates, an independent conflict management firm working under contract to the U.S. Institute for Environmental Conflict Resolution, which is serving in a neutral capacity to assist in the resolution of issues in an alternative dispute resolution process. Ideas developed or proposals discussed during deliberations by either the Plenary Group or Technical Working Group, or agreements on recommendations reached in either forum and recorded in Meeting Summaries are considered to be tentative and subject to review and/or approval by the leadership of participating federal, tribal and state agencies.

Trust Responsibility:

1. Rights to Missouri River water are part of the treaty rights of Native American Tribes that historically were or are along the river. These rights are judicially acknowledged in the Winters Doctrine. In assuming management responsibility and control of Missouri River water, the ACOE has assumed and acknowledges a trust responsibility for a Tribal resource. The essence of a trust responsibility is that the resource, in this case Missouri River water, is managed for the benefit of the Tribes. In practical terms this means not only that the water flows but also that it is practically accessible for Tribal use. Recommendation: The river should be managed in such a manner that the existing infrastructure supporting Tribal water use is not compromised by an action of the Corps.

Spot Monitoring:

The proposed spring rise may have adverse effects on specific locations that can be narrowly delineated. We suggest using aerial photographs taken before and after the spring rise to monitor the effects of the spring rise on these specific locations. Other means may be as effective or needed in other situations. Two locations are identified below but undoubtedly there are others. As a general recommendation, the Corps should solicit input from the various stakeholders about specific locations that warrant detailed monitoring. It might also be useful to model anticipated effects on these locations with those that actually occur.

1. The National Park Service manages in conjunction with the Corps the Missouri National Recreational River. This segment of the Missouri River extends above and below Gavin's point and was selected for special protection as a Wild and Scenic River because of its natural, historic, and cultural values. There is currently a program to mechanically construct emergent sandbar habitat in this stretch of the river. The spring rise might erode these sand bars, in which case there are two federal initiatives that are operating in opposition to each other. Recommendation: Extant sandbars in the Missouri National Recreational River should be monitored to determine the effect of the spring rise on the man-made sand bars. Future construction should be halted within the limits of the Missouri National Recreational River until it is determined whether the spring rise will destroy the man-made sandbars or perhaps naturally create suitable habitat.
2. The newly constructed Fort Yates intake on the Standing Rock Reservation is directly downstream from a delta deposit. Recommendation: This delta should be monitored to determine the effects of the spring rise. If the delta deposits are mobilized and endanger the intake, remedial steps requiring federal funding will have to be taken.

Adverse Impacts on Cultural Resources:

The Corps must comply with existing federal statutes covering cultural and historical resources, human burials, traditional cultural properties, and protection of sacred sites. These statutes include: the National Historic Preservation Act as amended in 1999 and as implemented in 36 CFR Part 800; the Native American Grave Protection and Repatriation Act of 1990 as implemented in 43 CFR Part 10; National Park Service Bulletin 38; the Abandoned Shipwreck Act of 1987; Executive order 13007, Indian sacred sites; and Executive Order 13084, consultation with American Indian Tribal Governments. The Endangered Species Act must work in concert with these statutes.

1. To identify the impact of the spring rise on cultural and historic resources, burial sites, and sacred sites, it is necessary to identify specific reservoir elevations as this will determine what sites will be impacted. Recommendation: A possible source of data for 2006 is projections of reservoir elevations made by the Corps in their Annual Operating Plan. To be usable for cultural resource issues this data needs to be translated onto topographic base maps.
2. Fluctuating pool levels in reservoirs have more adverse impact on cultural resources and burial sites than do stable water levels. Recommendation: Those plans that have the least effect on pool levels are preferable for protecting cultural resources and burial sites.
3. Protection of historic and cultural values along free-flowing segments of the Missouri River must be included. These segments include but are not limited to that segment designated as the Missouri National Recreational River. Question: What effects will the spring rise have on these segments and how will these effects affect cultural resources along these segments?
4. The existing database on cultural resources along the Missouri River is out of date. It includes sites that are poorly recorded (their exact location is unknown) and sites that have been destroyed. Other sites were missed and not recorded. Recommendation: A systematic resurvey should be conducted.
5. The adverse impacts on sites and burials by the spring rise include a) exposing sites and burials that were previously inundated and b) increasing erosion at sites and exposing intact burials. Both effects are elevation dependent. Recommendation: Sites and burials that become exposed on the surface or exposed to erosion need to be:
 - Identified (many were missed in the original surveys)
 - Assessed (is this site worth protecting?)
 - Monitored to protect against looting and vandalism
 - Physically protected if there is active erosion

6. The Corps currently allocates funds for protecting cultural resources. The proposed spring rise imposes additional burdens on federal, state, and tribal offices that need to be funded above and beyond existing levels. Additional funding for site identification, monitoring, and protection should be give high priority.
7. For Native Americans, protection of the burials of their ancestors is a very sensitive issue. This is a long and appalling history of abuse. Protection of the burials of their ancestors takes precedence for Native Americans over the protection of sites *per se*. There are existing protocols between Tribes and between Tribes and federal agencies addressing the proper treatment of Native American burials. Recommendation: A critical policy statement that should be present in all protocols is a statement that all human remains found in archaeological contexts within lands under Corps jurisdiction, including Title VI land, are presumed to be Native American unless there is compelling evidence to the contrary. Native American burials must be treated and given respect in tribally appropriate manners.